

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4219 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KALUJI GOVINDJI THAKOR

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MRS SD TALATI APP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 17/12/98

ORAL JUDGEMENT

In this writ petition under Article 226 of the Constitution of India, the prayer is to issue a writ of certiorari quashing the detention order dated 7th May 1998 passed against the petitioner by the Commissioner of Police, Ahmedabad, under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act (for short, "PASAA"). The grounds of detention were furnished to the

petitioner detenu simultaneously.

2. From the grounds of detention, Annexure.B, it appears that because of registration of five cases against the petitioner under the Bombay Prohibition Act and further because of the statements of two confidential witnesses, the detaining authority arrived at the subjective satisfaction that the activities of the petitioner in the nature of bootlegging activities, were prejudicial for maintenance of public order. Accordingly, the impugned order Annexure.A to the writ petition was passed. This order has been challenged on two grounds before me.

3. The first ground is that the complained activities of the petitioner do not amount to activities prejudicial for maintenance of public order. The contention has substance. From the grounds of detention, it can safely be said that the petitioner is a bootlegger. He is storing, possessing and selling country made liquor. On five occasions, he was apprehended and country made liquor was recovered in different quantities from him. As such, under Section 3(b) of the PASAA, he can be said to be bootlegger. However, mere bootlegging activity is not enough for detaining the petitioner under PASAA. Further requirement is that, his activity should be prejudicial for maintenance of public order as defined under Section 3(4) and explanation to Section 3 Sub-clause (4) of PASAA.

4. For this, the five registered cases under the Bombay Prohibition Act cannot be considered to be activities prejudicial for maintenance of public order. At the most, these were activities prejudicial to maintenance of law and order and these prejudicial activities were effectively dealt with inasmuch as the petitioner was booked under the relevant sections of the Bombay Prohibition Act. Nothing comes from the grounds of detention that at the time of raid and seizure, the petitioner created any situation or obstructed to search and seizure which can be termed as situation prejudicial for maintenance of public order.

5. So far as the statements of two confidential witnesses are concerned, I have gone through them. It is routine type of narration of incidents. One witness stated that on 17th April 1998 at about 10.00 a.m., the petitioner was selling country made liquor in the company of his associates near the Railway Station. The witness objected and thereupon the petitioner became excited and

beat the witness. The witness raised alarm whereupon people from nearby locality gathered. They were also threatened by the petitioner and the petitioner ran towards them with open razor. Hence, an atmosphere of fear gripped the area. The second witness, likewise, stated that on 21st April 1998 at 7.00 p.m., one person purchased liquor from the shop of the petitioner, he consumed it and thereafter he started misbehaving. The witness raised objection whereupon the petitioner became excited. He dragged the witness on the public road and beat him. The witness raised alarm whereupon the people gathered. The petitioner pointed knife to the witness as well as towards persons who collected on the spot. On account of this incident, an atmosphere of fear was created in the locality.

6. These two incidents are no more better than the two incidents examined by the Apex Court in *M.J.Shaikh v. M.M. Mehta*, C.P., 1995(2) GLR 1268. In this case also, the detenu chased the witnesses as well as the persons who collected at the spot and aimed his revolver towards the witnesses as well as the persons who collected at the spot. If revolver is a deadly weapon, razor and knife are equally deadly weapons. Beating was alleged in *M.J. Shaikh's* case (*supra*) also. In this case, consequently, the verdict of the Apex Court in *M.J.Shaikh's* case (*supra*) has to be strictly applied for coming to the conclusion that the prejudicial activities of the petitioner did not create a situation prejudicial for maintenance of public order. As such, the detention order is hardly justifiable. It is rendered illegal.

7. The second ground is that, two representations were made; one to the detaining authority and the other to the State Government. Both the representations were not considered and were returned to the Advocate of the detenu for obtaining signature or thumb impression of the detenu. This plea was not taken initially in the writ petition which was incorporated by way of amendment. From the counter affidavit of Shri J.R.Rajput, Under Secretary to Government of Gujarat, it appears from paragraph 4 that, one representation dated 26th May 1998 signed by the Advocate of the detenu addressed to the Chief Minister, was sent, which was received in the office of the Chief Minister on 28th May 1998. It was forwarded to the Home Department on the same date. Since it was not bearing the signature or thumb impression of the detenu, it was returned on 30th May 1998 to the Advocate for obtaining signature or thumb impression of the detenu and submitting the same again so that it may be considered, but since no compliance was received, it

could not be considered. From paragraph 2 of his counter affidavit, it further transpires that another representation dated 27th May 1998 was sent by the Advocate of the detenu to the detaining authority for being forwarded to the State Government. This representation was forwarded by the detaining authority to the State Government which was received in the Home Department on 30th May 1998. On 1st June 1998, it was again returned with the same remark like signature and thumb impression of the detenu were wanting on the representation, and compliance was, therefore, sought. It is, therefore, manifest that these two representations were not considered by the State Government which has rendered the detention and continued detention of the petitioner illegal. I am fortified in this view from the pronouncement of the Apex Court in Balchand Chorasias v. Union of India, AIR 1978 SC 297.

8. For the reasons stated above, the detention order has to be quashed. The writ petition, therefore, succeeds and is allowed. The impugned order of detention dated 7th May 1998, Annexure.A to the writ petition is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

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